

Department of Justice

§ 16.76

of the records would interfere with ongoing investigations and law enforcement activities and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(2) [Reserved]

[Order No. 63-92, 57 FR 8263, Mar. 9, 1992, as amended by Order No. 64-92, 57 FR 8263, Mar. 9, 1992]

§ 16.76 Exemption of Justice Management Division.

(a) The following system of records is exempt from 5 U.S.C. 552a(d):

(1) Controlled Substances Act Non-public Records (JUSTICE/JMD-002).

This exemption applies only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2).

(b) Exemption from subsection (d) is justified for the following reasons:

(1) Access to and use of the nonpublic records maintained in this system are restricted by law. Section 3607(b) of Title 18 U.S.C. (enacted as part of the Sentencing Reform Act of 1984, Pub. L. 98-473, Chapter II) provides that the sole purpose of these records shall be for use by the courts in determining whether a person found guilty of violating section 404 of the Controlled Substances Act qualifies:

(i) For the disposition available under 18 U.S.C. 3607(a) to persons with no prior conviction under a Federal or State law relating to controlled substances, or

(ii) For an order, under 18 U.S.C. 3607(c), expunging all official records (except the nonpublic records to be retained by the Department of Justice) of the arrest and any subsequent criminal proceedings relating to the offense.

(2) Information in this system consists of arrest records, including those of co-defendants. The records include reports of informants and investigations. Therefore, access could disclose investigative techniques, reveal the identity of confidential sources, and invade the privacy of third parties.

(c) The following system of records is exempted from 5 U.S.C. 552a(c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (5), and (8); and (g): Federal Bureau of Investigation Whistleblower Case Files (Justice/JMD-023). These exemptions

apply only to the extent that information in a record contained within this system is subject to exemptions pursuant to 5 U.S.C. 552a(j)(2) and (k).

(d) Exemption from the particular subsections is justified for the following reasons:

(1) *Subsection (c)(3)*. To provide the subject with an accounting of disclosures of records in this system could inform that individual of the existence, nature, or scope of an actual or potential law enforcement or counterintelligence investigation, and thereby seriously impede law enforcement or counterintelligence efforts by permitting the record subject and other persons to whom he might disclose the records to avoid criminal penalties, civil remedies, or counterintelligence measures.

(2) *Subsection (c)(4)*. This subsection is inapplicable to the extent that an exemption is being claimed for subsection (d).

(3) *Subsection (d)(1)*. Information within this record system could relate to official federal investigations and matters of law enforcement. Individual access to these records could compromise ongoing investigations, reveal confidential informants and/or sensitive investigative techniques used in particular investigations, or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation. Disclosure may also reveal information relating to actual or potential law enforcement investigations. Disclosure of classified national security information would cause damage to the national security of the United States.

(4) *Subsection (d)(2)*. Amendment of these records could interfere with ongoing criminal or civil law enforcement proceedings and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(5) *Subsections (d)(3) and (4)*. These subsections are inapplicable to the extent exemption is claimed from (d)(1) and (2).

(6) *Subsection (e)(1)*. It is often impossible to determine in advance if investigatory information contained in this system is accurate, relevant, timely and complete, but, in the interests of

effective law enforcement and counter-intelligence, it is necessary to retain this information to aid in establishing patterns of activity and provide investigative leads.

(7) *Subsection (e)(2)*. To collect information from the subject individual could serve to notify the subject individual that he or she is the subject of a criminal investigation and thereby present a serious impediment to such investigations.

(8) *Subsection (e)(3)*. To inform individuals as required by this subsection could reveal the existence of a criminal investigation and compromise investigative efforts.

(9) *Subsection (e)(5)*. It is often impossible to determine in advance if investigatory information contained in this system is accurate, relevant, timely and complete, but, in the interests of effective law enforcement and counter-intelligence, it is necessary to retain this information to aid in establishing patterns of activity and provide investigative leads.

(10) *Subsection (e)(8)*. To serve notice could give persons sufficient warning to evade investigative efforts.

(11) *Subsection (g)*. This subsection is inapplicable to the extent that the system is exempt from other specific subsections of the Privacy Act.

[Order No. 645–76, 41 FR 12640, Mar. 26, 1976, as amended by Order No. 688–77, 42 FR 9999, Feb. 18, 1977; Order No. 899–80, 45 FR 43703, June 30, 1980; Order No. 6–86, 51 FR 15476, Apr. 24, 1986; Order No. 246–2001, 66 FR 54663, Oct. 30, 2001; Order No. 297–2002, 67 FR 70163, Nov. 21, 2002; Order No. 019–2005, 71 FR 17, Jan. 3, 2006]

§ 16.77 Exemption of U.S. Trustee Program System—limited access.

(a) The following system of records is exempt from 5 U.S.C. 552a (c) (3) and (4); (d); (e) (1), (2) and (3), (e)(4) (G) and (H), (e) (5) and (8); (f) and (g):

(1) U.S. Trustee Program Case Referral System, JUSTICE/UST-004.

These exemptions apply to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2) and (k)(2).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because the release of the disclosure accounting would permit the subject of an investigation to obtain valuable information concerning the nature of that investigation. This would permit record subjects to impede the investigation, e.g., destroy evidence, intimidate potential witnesses, or flee the area to avoid inquiries or apprehension by law enforcement personnel.

(2) From subsection (c)(4) since an exemption being claimed for subsection (d) makes this subsection inapplicable.

(3) From subsection (d) because access to the records contained in this system might compromise ongoing investigations, reveal confidential informants, or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation. Amendment of the records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously re-investigated.

(4) From subsections (e)(1) and (e)(5) because in the course of law enforcement investigations, information may occasionally be obtained or introduced the accuracy of which is unclear or which is not strictly relevant or necessary to a specific investigation. In the interest of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of criminal activity. Moreover, it would impede the specific investigative process if it were necessary to assure the relevance, accuracy, timeliness, and completeness of all information obtained.

(5) From subsection (e)(2) because in a criminal investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement because the subject of the investigation would be placed on notice as to the existence of the investigation and would therefore be able to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony.

(6) From subsection (e)(3) because the requirement that individuals supplying